

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Counsel for Ad Hoc Group of Customers of Powin, LLC

In re:

Powin, LLC, *et al.*,¹

Debtors.

Case No. 25 – 16137 (MBK)

Chapter 11

(Jointly Administered)

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Powin, LLC [0504], (ii) PEOS Holdings, LLC [5476], (iii) Powin Project LLC [1583], (iv) Powin China Holdings 1, LLC [1422], (v) Powin China Holdings 2, LLC [9713], (vi) Charger Holdings, LLC [5241], (vii) Powin Energy Ontario Storage, LLC [8348], (viii) Powin Energy Operating Holdings, LLC [2495], (ix) Powin Energy Operating, LLC [6487]. The Debtors' mailing address is 20550 SW 115th Avenue Tualatin, OR 97062.

**SUPPLEMENT TO EMERGENCY MOTION OF AD HOC
CUSTOMER GROUP FOR ENTRY OF AN ORDER
(I) GRANTING ADEQUATE PROTECTION UNDER SECTION 363(e)
OF THE BANKRUPTCY CODE AND (II) GRANTING RELATED RELIEF**

Lone Star Solar, LLC,² Idaho Power Company, West Warwick Energy Storage 1, LLC, West Warwick Energy Storage 2, LLC, and West Warwick Energy Storage 3, LLC³ (each a “**Customer**,” and collectively, the “**Ad Hoc Customer Group**”), each a creditor, customer, and party in interest, by and through their undersigned counsel, hereby file this supplement to the *Emergency Motion of Ad Hoc Customer Group for Entry of an Order (I) Granting Adequate Protection Under Section 363(e) of the Bankruptcy Code and (II) Granting Related Relief* [Docket No. 297] (the “**Motion**”)⁴ as set forth below.

SUPPLEMENT

1. As set forth in the Motion, the Customers are licensees of intellectual property entitled to certain protections of their respective interests in certain intellectual property (and embodiments thereof) under sections 365(n) and 363 of the Bankruptcy Code. Since the Motion was filed, the Debtors have closed a sale of substantially all of their assets, including their intellectual property, to FlexGen Power Systems, LLC (“**FlexGen**”). The *Order (I) Authorizing the Debtors to Enter Into and Perform Under the FlexGen Power Systems, LLC Asset Purchase Agreement, (II) Approving the Sale of Purchased Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption and Assignment of the Assumed Contracts to Purchaser and Establishing Cure Amounts Related Thereto in Accordance with the*

² Lone Star Solar, LLC is a subsidiary of energyRe, LLC.

³ West Warwick Energy Storage 1, LLC, West Warwick Energy Storage 2, LLC, and West Warwick Energy Storage 3, LLC are direct subsidiaries of Convergent West Warwick, LLC and indirect subsidiaries of Convergent Energy and Power LP.

⁴ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Assumption and Assignment Procedures, and (IV) Granting Related Relief [Docket No. 751] (the “**Sale Order**”) provides that the sale was not free and clear of licensees’ rights under section 365(n) of the Bankruptcy Code. *See* Sale Order at ¶ 38. In addition, the Asset Purchase Agreement attached to the Sale Order (the “**APA**”) provides that the sale was subject to the rights of licensees under section 365(n) of the Bankruptcy Code. *See* APA at section 3.5.

2. Pursuant to the above provisions in the Sale Order and the APA, in addition to applicable caselaw, either the Debtors and/or FlexGen are required to honor the Customers’ rights under section 365(n) of the Bankruptcy Code and to protect the Customers’ respective interests in the Licensed IP (and such embodiments thereof) under section 363 of the Bankruptcy Code. *See, e.g., In re Crumbs Bake Shop, Inc.*, 522 B.R. 766, 774 (Bankr. D.N.J. 2014) (explaining that “a sale [of intellectual property] under section 363(f) does *not* trump the rights granted to [l]icensees by section 365(n),” even when the underlying contracts granting licenses in intellectual property are not assumed and assigned); *see also In re Dynamic Tooling Sys., Inc.*, 349 B.R. 847, 856 (Bankr. D. Kan. 2006) (stating that rights under section 365(n) of the Bankruptcy Code could be protected by use of section 363(e) of the Bankruptcy Code to limit or prohibit a sale free and clear to protect interests of licensees). For the avoidance of doubt, the Ad Hoc Customer Group seeks the relief requested in the Motion from both the Debtors and/or FlexGen and specifically seeks all relief requested in the Motion against FlexGen to the extent the Debtors, in light of the sale, are no longer able to provide the Customers with the Licensed IP (and such embodiments thereof) or to protect the Customers’ respective interests in the Licensed IP (and such embodiments thereof).

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Dated: August 29, 2025
New York, NY

/s/ Steven M. Abramowitz

VINSON & ELKINS LLP

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*Counsel for Ad Hoc Group of
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CERTIFICATE OF SERVICE

I certify that on August 29, 2025, I or another attorney of my firm caused a true and correct copy of the foregoing document to be: (i) served by the Electronic Case Filing System for the United States Bankruptcy Court for the District of New Jersey on those parties registered to receive electronic notices, and (ii) served upon (a) the Debtors, (b) the Office of the United States Trustee for the District of New Jersey, (c) counsel to the Committee, and (d) FlexGen.

/s/ Steven M. Abramowitz
Steven M. Abramowitz